

UNITED STATES OF AMERICA

v.

DAVID M. HICKS

PO 105 - Hicks

**Presiding Officer Direction to Respond
to Certain Questions**

**Standard for Challenges for Cause
Against a Member**

September 23, 2005

I. The Presiding Officer directs that not later than Oct 11 05, counsel for both sides in the above captioned case:

a. Respond to this filing by an attachment to an email to the Assistant and the Presiding Officer. The response shall contain the filing number and designation "PO 105 - Hicks - (Government) (Defense) Response to Presiding Officer Direction to Respond to Certain Questions - Standard for Challenge for Cause Against a Member." Once both responses are received, the APO will provide them to counsel for both sides. The parties will not submit replies to the responses of opposing parties unless they have leave of the Presiding Officer or the Presiding Officer directs.

b. *or in the alternative to the above option*, file a motion in accordance with POM # 4-3 within the same time frame as indicated above, provided that the motion answers the questions presented.

Note: The originally planned reply date was unilaterally extended by the Presiding Officer, without request by the Defense, to accommodate the known absence of MAJ Mori on OCONUS leave.

II. The responses are being directed so that the Presiding Officer may receive the considered views of counsel on this issue which he believes to be important to the provision of a full and fair trial. The questions have been framed to focus the replies of counsel, and they do not purport to state the Presiding Officer's views on the matter. All counsel must ***note that these directed responses are not a motion or request for relief.*** If counsel desire to file a motion or request for relief, they must follow the procedures in POM 4-3.

III. Questions presented:

a. Standard for challenges for cause against a member.

Question 1: Your attention is invited to a portion of the Appointing Authority's memorandum of Oct 19, 2004 (pasted below) in which he ruled on member challenges. Is this the correct standard for challenges? If not, why not?

"Based on the totality of the factual circumstances, a challenge for cause will be sustained if the member has an interest in the outcome of the case, may be biased for or against one of the parties, is not qualified by commission law to serve on the commission, or may be unable or unwilling to hear the case fairly and impartially considering only evidence and arguments presented in the accused's trial."

Question 2: Is implied bias the basis, or a basis, for a challenge which the Presiding Officer must consider? Explain your position.

IV. The format of the response shall be that convenient to the parties in a Word document as an attachment to the forwarding email. In separate paragraphs for each question and sub-question presented, the parties will provide:

- A. A succinct answer to the question.
- B. The basis for the answer citing authority.
- C. Include desired discussion and/or argument.

V. If a party wishes the Presiding Officer to consider any matters that are required to be attached, they must be accounted for as provided in paragraph 5i, POM# 4-3, and attached in accordance with paragraph 6, POM# 4-3.

Peter E. Brownback, III
COL, JA, USA
Presiding Officer